

## **INSTRUCTIONS FOR PREPARATION OF CONSOLIDATED PRETRIAL ORDER**

### **Form and Content of Pretrial Order**

In all adversary proceedings and whenever the Bankruptcy Court directs Part VII of the Bankruptcy Rules to apply in contested matters, the parties shall file a proposed pretrial order in accordance with this Rule.

**(a) Procedure.** Counsel for the parties shall confer and prepare a single, integrated document as a proposed consolidated pretrial order to be to the Bankruptcy Court within 30 days after the close of discovery or as the court directs. By "integrated" is meant that the document should not contain any attachments or exhibits; the information provided should be integrated into the proposed order (except see instructions for Paragraph 10). The pretrial order should also set forth the information in complete sentences. The instructions set forth below need not be repeated in the proposed order; for example, paragraph 3 of the proposed pretrial order could read as follows: "The parties do not seek a bifurcated trial."

Counsel for Plaintiff shall initiate contact with opposing counsel to arrange a date for the conference necessary to prepare the pretrial order. If counsel state in the pretrial order a wish for a pretrial conference, such request must be indicated on the proposed pretrial order immediately below the adversary proceeding number. Counsel will be notified if the Bankruptcy Judge determines a pretrial conference is necessary or would be helpful in preparing for trial or reaching settlement. A case shall be presumed ready for trial on the date the Pretrial Order is entered unless another time is specifically set by the Bankruptcy Court.

In those adversary proceedings or contested matters in which a motion for summary judgment is pending, the time for submitting the pretrial order shall automatically be suspended until 30 days after the Bankruptcy Court has ruled on the motion for summary judgment.

Pursuant to FRCP 16, incorporated in Bankruptcy Rule 7016, counsel have a duty to cooperate fully with each other to prepare a proposed pretrial order which complies with these instructions and with any other pretrial orders of the court. If either party's counsel fails to cooperate in preparation of the proposed pretrial order, opposing counsel may file, pursuant to FRCP 16, incorporated in Bankruptcy Rule 7016, a motion to compel such cooperation or for sanctions or both. Failure to cooperate may result in the imposition of sanctions upon the non-cooperating counsel.

Additionally, counsel may **not** reserve any matter described below for later presentation or inclusion. If counsel are unprepared to provide any of the information described below, an appropriate motion for extension of time should be filed.

**(b) Content.** Each proposed consolidated Pretrial Order shall include:

1. **PRELIMINARY STATEMENT:** A preliminary statement which certifies that no issues concerning the Bankruptcy Court's jurisdiction exist; that no pretrial motions are pending; that discovery has been completed; that the names of the parties are complete and correct; and that no issue of misjoinder or nonjoinder exists. This certification shall apply to all claims, counterclaims, cross claims and third-party claims.

If counsel are unable to so certify, the submission of a pretrial order is probably premature and counsel should file an appropriate motion for extension of time to allow resolution of such

issues. Following entry of the proposed pretrial order, counsel will not be permitted to file any further motions to compel discovery. Provided no delay in readiness for trial results, depositions for the preservation of evidence and for use at trial will be permitted.

2. **ATTORNEYS:** The individual names, addresses and telephone numbers of the lead counsel for each party;
3. **BIFURCATION/CONSOLIDATION:** If requested, a statement, setting forth the grounds therefor, that the parties desire a bifurcated or consolidated trial;
4. **RELATED LITIGATION:** A brief description, including style and case number, of any pending, related litigation, including any related pending adversary proceedings;
5. **OUTLINE OF PLAINTIFF'S CASE:** An outline of Plaintiff's case, which shall include:
  - (a) A succinct factual statement of the Plaintiff's claims for relief. This statement should not be argumentative and should recite **facts** but not evidence;
  - (b) A statement specifically describing relief sought, including itemization of any monetary claims.
  - (c) Citation of all relevant bankruptcy rules and statutes and any other rules, regulations, statutes, ordinances, and illustrative case law relied upon by Plaintiff;
6. **OUTLINE OF DEFENDANT'S CASE:** An outline of Defendant's case which shall include:

- (a) A succinct, factual statement of Defendant's general, special, and affirmative defenses. This statement should not be argumentative and should recite **facts** but not evidence;
- (b) For each counterclaim pleaded by Defendant, a statement specifically describing relief sought, including itemization of any monetary claims.
- (c) Citation of all relevant bankruptcy rules and statutes and any other rules, regulations, statutes, ordinances, and illustrative case law relied upon by Defendant.

7. **OBJECTIONS:**

- (a) If Defendant objects, either as to form or substance, to the outline of Plaintiff's case, a statement summarizing same.
- (b) If Plaintiff objects, either as to form or substance, to the outline of Defendant's case, a statement summarizing same.

8. **UNDISPUTED FACTS:** A list of all undisputed matters of fact. Counsel have a duty to cooperate fully with each other to identify all undisputed facts. A refusal to do so may result in the imposition of sanctions upon the non-cooperating counsel.

9. **WITNESSES:** A separate list, prepared by each party, of the witnesses, their addresses and telephone numbers, whom that party will have present at the trial and whom that party may have present at the trial, including impeachment and rebuttal witnesses whose use can or should be reasonably anticipated. A representation that a witness **will** be present may be relied on by other parties

unless notice is given one (1) week prior to trial to permit other parties to subpoena the witness or obtain the testimony by other means. Witnesses not included on the witness list will be not be permitted to testify.

**10. LIST OF EXHIBITS:**

- (a) Prepared using the Exhibit List Form obtained from the courtroom deputy clerk, a list of all documentary or physical evidence which will be tendered at trial. Exhibits should be described with particularity; e.g., "Exhibit 1: 1/1/87 \$25,000 Note"; not "Exhibit 6A: Note."
- (b) A list of each party's objections to the exhibits of another party. Any exhibit which is listed as required herein, but to which an objection is not raised shall be deemed to have been stipulated as to authenticity.

At least 14 days before the pretrial order is due, each party shall provide to opposing parties copies of any exhibits which will be tendered at trial and which have not previously been provided during discovery. Documents and physical exhibits may not be submitted by counsel after entry of the Pretrial Order, except upon consent of all parties or with permission of the Bankruptcy Court. Counsel shall familiarize themselves with all exhibits prior to trial. Counsel will not be afforded time during trial to examine exhibits which are or should have been listed herein.

**11. TESTIMONY BY DEPOSITION:**

- (a) A list of all persons whose testimony by deposition will be offered by Plaintiff at trial; designation of the portions of each deposition which will be introduced; and all objections by opposing parties to any portions of said deposition.

- (b) A list of all persons whose testimony by deposition will be offered by Defendant at trial; designation of the portions of each deposition which will be introduced; and all objections by opposing parties to any portions of said deposition.
- (c) A list of any other persons whose testimony by deposition will be offered by parties other than Plaintiff or Defendant; designation of the portions of each deposition which will be introduced; and all objections thereto.
12. **TRIAL BRIEFS:** A description of evidentiary questions and other legal issues about which any party will file a trial brief. Briefs must be filed no less than one week before trial and must be limited to 25 pages unless leave to exceed the limit is granted by the Bankruptcy Court in advance. No brief will be considered that does not comply. Any brief in excess of 15 pages shall be indexed.
13. **SETTLEMENT:** A statement of the date on which counsel met personally to discuss settlement, whether the Bankruptcy Court has discussed settlement with counsel, and the likelihood of settlement of the proceeding prior to trial.
16. **LENGTH OF TRIAL:** Counsel for each party shall estimate the length of time, **in hours**, required to present that party's case.
17. **OTHER MATTERS:** Any other matters appropriate for inclusion in the pretrial order.
18. **PRETRIAL CONFERENCE:** Any request for a pretrial conference.

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The following paragraphs shall appear at the close of each proposed pretrial order above the signature line for the Bankruptcy Judge:

IT IS HEREBY ORDERED that the above constitutes the pretrial order for this adversary proceeding [or contested matter] submitted by stipulation of the parties. It is further

ORDERED that the foregoing constitutes the pretrial order in this adversary proceeding [or contested matter] and that it supersedes the pleadings which are hereby amended to conform hereto. This pretrial order shall not be amended except by order of the Bankruptcy Court, to prevent manifest injustice.

The signatures of lead counsel for each party shall appear on the last page below the space provided for Bankruptcy Judge's signature.

**Sanctions**

Failure to comply with the Bankruptcy Court's pretrial instructions may result in the imposition of sanctions, including dismissal of the adversary proceeding or entry of a default judgment.